MLN Matters
Information for Medicare Fee-for-Service Health Care Professionals

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Skilled Nursing Facility (SNF) Consolidated Billing Service Furnished Under an "Arrangement" with an Outside Entity

Note: This article was revised on June 16, 2006, to provide revised Web addresses. No other changes were made.

Provider Types Affected

Any physician, provider, or supplier who renders a Medicare-covered service subject to consolidated billing to a SNF resident

Provider Action Needed

No provider action is necessary. This article is informational only and clarifies the instruction contained in CR3248, issued on May 21, 2004. It explains that an "arrangement" between a Medicare skilled nursing facility (SNF) and its supplier is validated not by the presence of specific supporting written documentation but rather by their actual compliance with the requirements governing such "arrangements." However, supporting written documentation that provides details regarding the services to be provided "under arrangement" and the manner in which the SNF will pay the supplier for those services can help both parties arrive at a mutual understanding on these important points.

Background

Under the SNF consolidated billing provisions of the Social Security Act (the Act) the Medicare billing responsibility is placed with the SNF itself for most of its residents' services. (See Sections 1862(a)(18), 1866(a)(1)(H)(ii) and 1888(e)(2)(A)). The SNF must include on its Part A claim submitted to its Medicare intermediary almost all of the services a resident receives during a covered stay. The SNF should not include on the claim those services which are excluded from the SNF's prospective payment system (PPS) per diem payment for the particular stay.

These excluded services continue to be separately billable under Part B by those outside suppliers that actually furnish the service. In this context, the term "supplier" can also refer to:

- A provider of services (such as a hospital), which would submit the bill for Part B services to its Medicare intermediary; and
- Practitioners who, in addition to performing their separately billable professional services, essentially act as a supplier by also furnishing other services that are subject to the consolidated billing requirement.

Outside entities (other than a provider of services) would generally submit their Part B bills to a Medicare carrier, but Part B bills for certain types of items or equipment are submitted to the Medicare Durable Medical Equipment Regional Carrier (DMERC).

In addition, Part B consolidated billing makes the SNF itself responsible for the submission of Part B bills for any *physical, occupational or speech-language therapy services* received by a resident during a *non-covered* stay.

Further, the SNF must provide any Part A or Part B service that is subject to SNF consolidated billing either directly with its own resources, or through an outside entity (e.g., a supplier) under an "arrangement," as set forth in Section 1861(w) of the Act. If an outside entity provides a service that is subject to SNF consolidated billing to a SNF resident during a covered stay, the outside entity must look to the SNF for payment (rather than billing under Part B). In these situations, Medicare's payment to the SNF represents payment in full for the arranged-for service, and the SNF in turn is responsible for making payment to an outside entity that furnishes a service which is included in the SNF's prospective payment system (PPS) per diem payment.

Problem Situations

Since the start of the SNF PPS, problematic situations have arisen when the SNF resident receives services that are subject to consolidated billing from an outside entity, such as a supplier. These problems are usually connected with either of two scenarios, namely:

- An SNF does not accurately identify services as being subject to consolidated billing when ordering such services from a supplier; or
- A supplier fails to ascertain a beneficiary's status as an SNF resident when the beneficiary (or other individual acting on behalf of the beneficiary) seeks to obtain such services directly from the supplier without the SNF's knowledge.

Documenting Arrangements

SNFs should document, in writing, arrangements with suppliers that render services on an ongoing basis (e.g., pharmacies, laboratories and x-ray suppliers)

to the SNF's patients. Documentation of a valid arrangement, including mutually agreeable terms, should help to avoid confusion and friction between SNFs and their suppliers. Suppliers need to know which services fall under the consolidated billing provisions so they do not improperly bill Medicare carriers under Part B or other payers (like Medicaid and beneficiaries) directly for services.

It is also important that when ordering or providing services "under arrangement," the parties reach a mutual understanding of all the payment terms, e.g., how to submit an invoice, how payment rates are determined, and how long it will take for payment after the supplier presents an invoice to the SNF.

SNF's Responsibility

However, the absence of an agreement with its supplier (written or not) does not relieve the SNF of its responsibility to pay suppliers for services "bundled" in the SNF PPS payment from Medicare. The SNF must be considered the responsible party (even in cases where it did not specifically order the service) when beneficiaries in Medicare Part A stays receive medically necessary supplier services, because the SNF has already been paid under the SNF PPS. Examples of this obligation occur when:

- The physician performs additional diagnostic tests during a scheduled visit that had not been ordered by the SNF; or
- A family member arranges a physician visit without the knowledge of SNF staff and the physician bills the SNF for "incident to" services.

Establishing a valid arrangement prior to ordering services from a supplier minimizes the likelihood of a payment dispute between the parties. However, occasional disagreements between the parties that result in non-payment by the SNF of a supplier claim may occur. When patterns of such non-payment are identified, there are potentially adverse consequences to SNFs with regard to their Medicare agreement. All SNFs, under the terms of their Medicare provider agreement, must comply with program regulations. These regulations require a valid arrangement to be in place between the SNF and any outside entity providing resident services subject to consolidated billing. Moreover, in receiving a bundled per diem payment under the SNF PPS that includes such services, the SNF is accepting Medicare payment and financial responsibility for the service.

Under Section 1862(a)(18) of the Act, there is no valid "arrangement" if a SNF obtains services subject to consolidated billing from an outside supplier but refuses to pay the supplier for those services. This situation could result in the following consequences:

- The SNF is found in violation of the terms of its provider agreement; and/or
- Medicare does not cover the particular services at issue.

The SNF's provider agreement includes a section requiring a specific commitment to comply with the requirements of the consolidated billing provision (see Section 1866(a)(1)(H)(ii) of the Act and the regulations at 42 CFR 489.20(s)). Also Section 1866(g) of the Act imposes a civil money penalty on any person who knowingly and willfully presents (or causes to be presented) a bill or request for payment inconsistent with an arrangement or in violation of the requirement for such an arrangement.

Additional Guidance

In the absence of a valid "arrangement" between a SNF and its supplier, the problems which arise tend to fall into one of the following problem scenarios.

Problem Scenario 1

A SNF elects to utilize an outside supplier to furnish a type of service that would be subject to Part A consolidated billing, but then fails to inform the supplier that the resident receiving the service is in a covered Part A stay. This causes the supplier to conclude mistakenly that the service it furnishes to that resident is not subject to consolidated billing.

Based on the inaccurate impression that the resident's SNF stay is non-covered, the supplier inappropriately submits a separate Part B claim for the service and may also improperly bill other insurers and the resident. Then the supplier only learns of the actual status of the resident's Medicare-covered SNF stay when that Part B claim is denied by Medicare.

In this scenario, even though the supplier may have made reasonable efforts to ascertain from the SNF both the beneficiary's status as an SNF resident and the specific nature of the beneficiary's SNF stay, the information from the SNF (on which the supplier relied) proved to be inaccurate.

The Centers for Medicare & Medicaid Services (CMS) realizes that unintentional mistakes occasionally may occur when furnishing such information. However, the SNF is responsible for making a good faith effort to provide accurate information to its supplier and to pay the supplier once the error is pointed out.

In Scenario 1, if the SNF refuses to pay the supplier even after the supplier brings the situation to the attention of the SNF, the SNF would risk being in violation of its provider agreement by not complying with consolidated billing requirements. As stated previously, supporting written documentation for services provided "under arrangement" would provide a basis for resolving the dispute and ensuring compliance with the consolidated billing requirements.

By making sure that it sends accurate and timely information to its supplier regarding a resident's covered stay, the SNF can often prevent disputes such as those described in Scenario 1 from arising. The communication of accurate and

timely resident information by the SNF to the supplier is especially important when a portion of an otherwise "bundled" service remains separately billable to Part B (e.g., the professional component representing a physician's interpretation of an otherwise "bundled" diagnostic test).

Problem Scenario 2

A resident temporarily departs from the SNF on a brief leave of absence, typically accompanied by a relative or friend. While briefly offsite, the resident (or the relative or friend, acting on the resident's behalf) obtains services that are subject to the consolidated billing requirement, but fails to notify the SNF. The SNF refuses to pay for the offsite services, and the supplier bills the beneficiary/family member directly.

As in the previous scenario, the SNF remains responsible for any services included in the SNF "bundle" of services subject to consolidated billing that are furnished to the resident by an outside entity, *even in the absence of a valid arrangement with the SNF.*

The SNF can take steps to prevent problems like this from occurring by making sure that the resident or his/her representative fully understands the applicable requirements. For example, under Section 1802 of the Act, Medicare law guarantees to a beneficiary the right to choose any qualified entity willing to provide services to him/her. By selecting a particular SNF, the beneficiary has in effect exercised this right of choice regarding the entire array of services for which the SNF is responsible under the consolidated billing requirement and agrees to use only those suppliers that the SNF selects or approves to provide services.

The staff of the SNF should explain these rights and requirements to the beneficiary and his/her family members or representative(s) during the admission process. In addition, the SNF should periodically remind the beneficiary or his/her representative of these rights/requirements throughout the resident's stay, and especially upon the resident's temporarily leaving the facility.

The supplier in this scenario also retains responsibility for preventing problems from arising by understanding and complying with the consolidated billing requirements. Therefore, before providing beneficiary services, the supplier should determine whether that beneficiary currently receives any comprehensive Medicare benefits (e.g., SNF or home health) which could include the supplier's services. If the beneficiary is a resident of an SNF with which the supplier does not have a valid "arrangement," the supplier should consult with the SNF before actually furnishing any services which may be subject to the consolidated billing provision. Further, the supplier should know that the beneficiary cannot be charged for the bundled service in accordance with the regulations at 42 CFR 489.21(h).

Additional Information

The *Medicare Claims Processing Manual* has been revised to include language reflecting this clarification. That revision is attached to the official instruction issued to your carrier/intermediary regarding this change. The official instruction may be found at http://www.cms.hhs.gov/Transmittals/downloads/R412CP.pdf

Also if you have any questions, please contact your carrier/intermediary at their toll-free number, which may be found at http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.pdf